



STATE OF WASHINGTON

**PUBLIC DISCLOSURE COMMISSION**

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TO: Members, Public Disclosure Commission

FROM: Doug Ellis  
Assistant Director

DATE: April 19, 2006

SUBJECT: Continuation of Rule-Making Process

The following draft rule amendment is presented as a continuation of the rule making activity initiated at your February 23, 2006 meeting.

Possible amendment of **WAC 390-37-090 Informal settlement – Cases resolvable by stipulation prior to an enforcement hearing (adjudicative proceeding), or by other alternative dispute mechanisms.** This rule amendment reflects the Commission's intent to receive stipulated agreements involving civil penalties prior to an adjudicative proceeding. Stipulations shall be provided by 4:00 p.m. the business day preceding a Commission hearing.

Action by the Commission: At this point, staff is requesting the Commission approve the draft amendment to WAC 390-37-090. If approved, the draft language will be filed with the Code Reviser's Office and a public hearing will be scheduled for June 29, 2006.

AMENDATORY SECTION (Amending WSR 05-11-001, filed 5/4/05, effective 6/4/05)

**WAC 390-37-090 Informal settlement--Cases resolvable by stipulation prior to an enforcement hearing (adjudicative proceeding), or by other alternative dispute mechanisms.** (1) RCW 34.05.060 authorizes agencies to establish by rule specific procedures for attempting and executing informal settlement of matters. The following procedures are available for informal dispute resolution prior to an adjudicative proceeding that may make more elaborate proceedings under the Administrative Procedure Act unnecessary.

(a) Any enforcement matter before the commission which has not yet been heard in an adjudicative proceeding may be resolved by settlement. The respondent shall communicate his or her request to the executive director or designee (commission staff), setting forth all pertinent facts and the desired remedy. Settlement negotiations shall be informal and without prejudice to rights of a participant in the negotiations.

(b) When the executive director and respondent agree to terms of any stipulation of facts, violations, and/or penalty, commission staff shall prepare the stipulation for presentation to the commission.

(c) Any proposed stipulation shall be in writing and signed by each party to the stipulation or his or her representative. The executive director shall sign for commission staff. ~~((The stipulation shall be provided at the hearing.))~~ Any stipulation to facts and violations shall be provided prior to or at the hearing. Stipulations to penalty shall be provided by 4:00 p.m. the business day preceding the hearing. The commission has the option of accepting, rejecting, or modifying the proposed stipulation or asking for additional facts to be presented. If the commission accepts the stipulation or modifies the stipulation with the agreement of the opposing party, the commission shall enter an order in conformity with the terms of the stipulation. If the commission rejects the stipulation or the opposing party does not agree to the commission's proposed modifications to the stipulation, and if no revised stipulation or staff report is presented to the commission, then an adjudicative proceeding shall be scheduled and held.

(2) Parties are encouraged to be creative in resolving cases without further litigation where appropriate.

(3) Following a stipulation of facts or law, if the commission determines certain sanctions or other steps are required by the respondent as a result of the alternative dispute resolution including stipulations and that it intends to enter an order, and the respondent does not timely raise an objection at the hearing, it shall be presumed that the respondent has waived objections and appeals, and agrees to the entry of the order.